IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 735 of 2006

Noor Mohamad Y. Dingankar .. Petitioner

versus

Mrs.Shabana N. Dingankar .. Respondent

...

Mr.S.B. Shetye for the petitioner.

Mr.Rakesh Bhatkar for the respondent.

CORAM : D.G. KARNIK, J

DATED : 3rd March 2006.

P.C.:

1. After having heard the learned counsel for the petitioner, I am satisfied that the impugned orders do not call for any interference.

2. The first order impugned in this petition was

passed on 19th December 2003. The present Writ Petition has been filed on 2nd February 2006 i.e. after a lapse of more than two years of passing of the order. The delay is not satisfactorily explained. The order is of an interim maintenance and does not finally adjudicate any rights between the parties. I am not inclined to interfere not only on the ground of delay but also on merits as I do not see any perversity in the interlocutory order.

3. The second order impugned in this petition was passed on 8th December 2005 below an application made by the petitioner under section 151 of the Code of Civil Procedure. In my view, application u/s.151 of the Code of Civil Procedure was misconceived. Perusal of the application shows that the petitioner intended to challenge the legality of the earlier order dated 19th December 2003. This could be done only in a superior forum in an appeal or other appropriate proceedings and not before the same court by an application u/s.151.

4. For these reasons, Writ Petition is rejected summarily.

5. Learned counsel for the petitioner prays that petitioner be granted some time for paying the arrears of maintenance. The petitioner through the learned counsel, undertakes to this Court to pay all arrears of maintenance within a period of eight weeks. Undertaking is recorded and accepted. In view of this undertaking, petitioner is granted eight weeks time for payment of the arrears of maintenance.

(D.G. KARNIK, J)